

**Leibovitz v. Paramount Pictures Corp.,
137 F.3d 109 (2d Cir. 1998)**

Year	1998
Court	United States Court of Appeals for the Second Circuit
Key Facts	Plaintiff Annie Leibovitz took a famous nude photograph of then-pregnant actress Demi Moore for the August 1991 cover of <i>Vanity Fair</i> . Defendant Paramount, in connection with its forthcoming release of the motion picture <i>Naked Gun 33 1/3</i> , produced advertising material that included a head shot of Leslie Nielsen superimposed onto the body of a nude pregnant woman posed similarly to Demi Moore. When Leibovitz sued for copyright infringement, Paramount asserted the fair use defense, claiming the work was a parody. Leibovitz appealed the district court's ruling that defendant's use of plaintiff's Demi Moore photograph was fair use.
Issue	Whether the unauthorized recreation of aspects of plaintiff's photograph to promote the release of a motion picture constituted a fair use.
Holding	The court upheld the district court's ruling that defendant's use of the original photo was a fair use parody of the original. Noting that a commercial use is not presumptively unfair, the court found that the parodic nature of the advertisement weighed in favor of a finding of fair use. In addition, the court found that, under <i>Campbell v. Acuff-Rose Music, Inc.</i> , 510 U.S. 569 (1994), copying more than what was necessary to "conjure up" the original work would not necessarily weigh against fair use for parodies, and held that defendant's extensive copying was for the purpose of parodying the original photograph. Finally the court found that the parody did not serve as a market substitute, especially since plaintiff conceded that the use did not interfere with any potential market for the original or derivative works.
Tags	Second Circuit; Parody/Satire; Photograph
Outcome	Fair use found

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